Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; Crystal Springs Shirt Corp.; Bernstein and Sons Shirt Corp., Inc. *and* Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC. Case 26-CA-7503

April 10, 1981

DECISION AND ORDER

On October 7, 1980, Administrative Law Judge William N. Cates issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent filed exceptions and supporting briefs.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions of the Administrative Law Judge, to modify his remedy,[3] and to adopt his recommended Order, as modified herein.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp. Shaw, Mississippi; Crystal Springs Shirt Corp., Crystal Springs, Mississippi; Bernstein and Sons Shirt Corp., Inc., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(b):

"(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the following for paragraph 2(a):

"(a) Reimburse and make whole the unfair labor practice strikers for any loss of pay they may have suffered by reason of Respondent's discrimination against them during the period commencing October 25, 1978, until the date of Respondent's unconditional offer of reinstatement to them or until Respondent ceased operation at its Shaw Industries, Inc., location on March 31, 1979, whichever is earlier, together with interest at the rate and in the manner set forth in the section of the Administrative Law Judge's Decision entitled 'The Remedy.'"

3. Substitute the attached notice for that of the Administrative Law Judge.

[1] At the hearing, the Administrative Law Judge denied Respondent's motion for an indefinite postponement, ruling that Respondent has not been prejudiced or denied due process because of the almost 2-year delay in litigating this matter while a related case involving Respondent was being adjudicated (Crystal Springs Shirt Corporation, Bernstein and Sons Shirt Corporation, 245 NLRB 882 (1979)). Respondent has excepted to this ruling, contending that the General Counsel's delay in litigating this proceeding prejudiced it because such delay diminished its access to former employees, records, and other evidence occasioned by the March 31, 1979, closing of Respondent's Shaw Industries plant. After careful review of the record, we find that Respondent had timely and sufficient notice both that this matter would be brought to a hearing and of the allegations to be litigated. We agree with the Administrative Law Judge that, armed with such knowledge, Respondent had an obligation to preserve its records and documents. We further note that Respondent, in fact, introduced into evidence certain of those records. Therefore, we find that Respondent did not suffer any prejudice or lack of due process because of the delay in litigation.

Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

The General Counsel asserts that the Administrative Law Judge committed prejudicial error when he granted Respondent's oral motion to quash the General Counsel's *subpoena duces tecum* which was issued at the hearing. We find, in agreement with the Administrative Law Judge, that service of the subpena was defective because it was not served on anyone authorized to receive service in Respondent's behalf, and, moreover, that Respondent had come forward with certain evidence that was relevant to certain pertinent portions of the subpena. Although Sec. 102.66(c) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, requires that a petition to revoke be in writing and filed within 5 days of receipt of service, we find in these circumstances that the absence of a written motion to quash has not resulted in prejudice to the General Counsel. *G. W. Wilson a/k/a G. W. Truck; Upland Freight Lines, Inc.*, 240 NLRB 333 (1979).

[2] The General Counsel and Respondent have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] The General Counsel has excepted to the Administrative Law Judge's remedy wherein he recommended that backpay commence 5 days after the date the striking employees made their unconditional offer to return to work. The General Counsel argues that, because Respondent neither timely nor properly reinstated its employees and then subsequently closed the plant, no useful purpose would be served by delaying the backpay liability for 5 days. We find merit in this exception and, accordingly, we shall order backpay to commence as of the date of the unconditional offer to return to work.

The General Counsel further has excepted to the Administrative Law Judge's failure to include in his remedy a remedial interest rate of 9 percent per annum, contending that "recent financial events" warrant a reconsideration of *Florida Steel Corporation*, 231 NLRB 651 (1977). In *Olympic Medical Corporation*, 250 NLRB 146 (1980), we afforded the reconsideration requested and decided to adhere to the formula set forth therein. Accordingly, we deny the General Counsel's exception. Member Jenkins, while concurring with the result reached herein, still adheres to his views as expressed in his dissenting opinion in *Olympic Medical Corporation, supra*, regarding the calculation of said interest.

[4] The General Counsel also excepted to the Administrative Law Judge's recommended imposition of a narrow cease-and-desist order. We agree with the General Counsel that Respondent's history of engaging in egregious misconduct, such as that found herein and cited *supra*, clearly "demonstrate[s] a general disregard for [its] employees' fundamental statutory rights" and warrants the imposition of a broad order. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to reinstate employees who have struck to protest our unlawful conduct upon their unconditional offer to return to work.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole for any loss of pay the unfair labor practice strikers named in the complaint may have suffered by reason of our refusal to reinstate the unfair labor practice strikers during the period commencing October 25, 1978, until our unconditional offer of reinstatement to them or until the Shaw Industries, Inc., plant closed on March 31, 1979, in any othe manner set forth according to law.

SHAW INDUSTRIES, INC., A DIVISION OF CRYSTAL SPRINGS SHIRT CORP.; CRYSTAL SPRINGS SHIRT CORP.; BERNSTEIN AND SONS SHIRT CORP., INC.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge: This case was heard at Greenville, Mississippi, on July 9, 1980. Upon a charge filed by Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, herein called the Union or the Charging Party, the Regional Director for Region 26 of the National Labor Relations Board, herein called the Board, issued a complaint on December 21, 1978, alleging that Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; Crystal Springs Shirt Corp.; Bernstein and Sons Shirt Corp., herein collectively called Respondent, violated Section 8(a)(1), (3), and (5) of the Act by refusing to timely and properly reinstate employees who had made an unconditional offer to return to work following a strike and by refusing to bargain collectively with the Union. Thereafter, the complaint was amended on January 25, 1980, deleting the 8(a)(5) allegation therefrom. The complaint was amended a second time on July 3, 1980, by the Regional Director for Region 26, adding the allegation that Shaw Industries, a Division of Crystal Springs Shirt Corp., Crystal Springs Shirt Corp., and Bernstein and Sons Shirt Corp. constituted a single, integrated business enterprise and a single employer within the meaning of the Act. Respondent has denied that it has violated the Act as alleged.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs.

Upon the entire record in the case and from my observation of the witnesses and their demeanor, and after due consideration of briefs filed by counsel for the General Counsel and Respondent's counsel, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Shaw Industries, a Division of Crystal Springs Shirt Corp., has been an unincorporated division of Crystal Springs Shirt Corp., with an office and place of business in Shaw, Mississippi, where it has been engaged in the manufacture of garments. Crystal Springs Shirt Corp. has been a corporation with an office and place of business at Shaw, Mississippi, being the same office and place of business as Shaw Industries,[1] and has been engaged in the manufacture of garments. Bernstein and Sons Shirt Corp. has been a corporation with an office and place of business in New York City, New York. Crystal Springs Shirt Corp. is a wholly-owned subsidiary of Bernstein and Sons. At all times material to this case, Shaw Industries, a Division of Crystal Springs Shirt Corp.; Crystal Springs Shirt Corp.; and Bernstein and Sons Shirt Corp. have been affiliated business enterprises with common officers, ownership, directors, management, and supervision, and have formulated and administered a common labor policy affecting employees of the operations and, further, have provided services for and made sales to each other and have held themselves out to the public as a single, integrated business enterprise and a single employer within the meaning of the Act. On an annual basis, prior to the issuance of the original complaint, Respondent, as collectively described above, sold and shipped products valued in excess of $50,000 directly to points located outside the State of Mississippi from its Shaw, Mississippi, facility. During the same period Respondent, as collectively described, in the course and conduct of its Shaw, Mississippi, business operation, purchased and received at its Shaw, Mississippi, facility

[1] Crystal Springs Shirt Corp. also has an office and place of business in Crystal Springs, Mississippi, which is approximately 175 miles from Shaw, Mississippi.

products, goods, and materials valued in excess of $50,000 directly from points outside the State of Mississippi. The complaint alleges, Respondent admits, and I find that Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; Crystal Springs Shirt Corp.; Bernstein and Sons Shirt Corp., Inc., constitute a single, integrated business enterprise and a single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

The case before me is inextricably intertwined with the case *Crystal Springs Shirt Corporation, Bernstein and Sons Shirt Corporation*, 245 NLRB 882 (1979), in which the Board adopted Administrative Law Judge Julius Cohn's Decision wherein Administrative Law Judge Cohn found that the strike engaged in by the employees of Crystal Springs Shirt Corporation at Crystal Springs, Mississippi, was an unfair labor practice strike. The strike at the Crystal Springs Shirt Corporation commenced on April 3, 1978. Respondent and the Union in the present case were the same parties in the *Crystal Springs, supra.*

The Union held a meeting of the employees of Shaw Industries, Inc., on April 5, 1978, to determine whether the employees of Shaw Industries, Inc., would engage in a strike. The employees of Shaw Industries, Inc., commenced striking at the Shaw facility on April 6, 1978, following an April 5 authorization vote by the employees to strike. The employees of Shaw Industries, Inc., remained on strike until October 19, 1978, at which time they ceased striking and notification was given to Respondent of their decision to cease striking. Respondent acknowledged notification of the decision to cease striking by the Shaw Industries, Inc., employees on October 25, 1978. The central issue to be decided in the case before me is whether the strike the employees of Shaw Industries, Inc., engaged in was caused and prolonged by the unfair labor practices of Respondent at its garment manufacturing facility in Crystal Springs, Mississippi. Simply stated, were the employees of Shaw Industries, Inc., motivated to go on strike in sympathy with the unfair labor practice strike of their fellow employees at Crystal Springs Shirt Corporation? It is approximately 175 miles between Crystal Springs and Shaw, Mississippi. Shaw Industries, Inc., ceased operation and went out of business on March 31, 1979. There is no contention that the going-out-of-business of Shaw Industries, Inc., was unlawful in any manner.

B. *The Strike at Shaw*

Employee Marguerite Young testified that she began working for Shaw Industries, Inc., in May 1974 and worked there until the plant closed in 1979. Young testified that following the normal workday on April 5, 1978, she went to the union hall to attend a meeting of the Union. Approximately 50 fellow employees from Shaw Industries, Inc., attended the meeting, along with Union Representatives Ruth Young and Woody Biggs. According to Marguerite Young, Union Representative Biggs introduced three employees that were in attendance at the meeting who were employees of Crystal Springs Shirt Corp. Young testified the employees from Crystal Springs Shirt Corp. told the Shaw Industries, Inc., employees that the employees at Crystal Springs Shirt Corp. were going on strike in protest of unfair labor practices of Respondent at its Crystal Springs, Mississippi, location. The Crystal Springs Shirt Corp. employees asked the Shaw Industries, Inc., employees to support them in their unfair labor practice strike by striking Respondent at its Shaw, Mississippi, facility. Employee Young made a motion at the meeting in favor of the Shaw Industries, Inc., employees engaging in a strike at Respondent's Shaw, Mississippi, location. It was decided at the meeting that the Shaw Industries, Inc., employees would go on strike the next day, April 6, 1978. Some of the signs carried by the striking employees at Shaw Industries, Inc., read, in part, "Unfair Labor Practice Strike at Crystal Springs," according to employee Young. Employee Young denied there was any mention by the union officials who were present at the April 5 meeting that what they hoped to accomplish with a strike was to get Respondent to meet some of their demands in negotiations at Shaw Industries, Inc. Young stated the only reason the employees of Shaw Industries, Inc., voted to strike was to help their fellow employees at Crystal Springs Shirt Corp. Young testified that she could not remember anything being said about piece rates or timestudies at the April 5 meeting by the employees from Crystal Springs Shirt Corp. Young testified that no one had instructed her on what to say in the motion she made to support the employees of Crystal Springs Shirt Corp. in their strike.

Ruth Mae Johnson testified with respect to events of the April 5, 1978, meeting of the employees of Shaw Industries, Inc. Johnson corroborated the testimony of employee Young in all essential matters. However, employee Johnson recalled that the subject matter of piece rates had been discussed by the women from Crystal Springs Shirt Corp., who had urged the employees of Shaw Industries, Inc., to join the Crystal Springs Shirt Corp. employees in their strike. Johnson testified, however, that the essential request of the employees from Crystal Springs Shirt Corp. was to have the employees of Shaw Industries, Inc., join them in their unfair labor practice strike because the employees of Crystal Springs Shirt Corp. were not being treated fairly. There seemed to be some confusion between the testimony of employees Young and Johnson as to who had opened the April 5, 1978, meeting. However, I credit the testimony of both Young and Johnson as to what was said by the Shaw Industries, Inc., employees and the Crystal Springs Shirt Corp. employees in regard to the request to go out on strike and the motion by employee Young of Shaw Industries, Inc., that the employees engage in a strike. The

testimony of Young and Johnson in essential parts was corroborated by the testimony of employee Clara Larkins.

As noted above, the strike by the employees of Crystal Springs Shirt Corp. at Crystal Springs, Mississippi, that commenced on April 3, 1978, was found to be an unfair labor practice strike by the Board. I find there is a causal connection between the unfair labor practice strike at Crystal Springs Shirt Corp. and the strike that the employees of Shaw Industries, Inc., engaged in at Shaw, Mississippi. I find that the employees of Shaw Industries, Inc., were striking in sympathy with and support of the strike that their fellow employees were conducting at Crystal Springs Shirt Corp. to protest the unfair labor practices of Respondent at that location. I do not view as significant whether the employees at Shaw Industries, Inc., understood what the piece rate protestations of the employees at Crystal Springs Shirt Corp. were; or, whether they understand fully what might constitute an unfair labor practice strike. I find the basis of the strike at Shaw Industries, Inc., was grounded in the strike at Crystal Springs Shirt Corp., which has been found to be an unfair labor practice strike. Accordingly, I find and conclude that the strike at Shaw Industries, Inc., was an unfair labor practice strike.

Employee Clara Larkins testified she attended a union meeting of the Shaw Industries, Inc., employees on October 18, 1978. According to Larkins' testimony, Union Representatives James McCormick and Woody Biggs were present. McCormick and Biggs informed the Shaw Industries, Inc., employees that the strike at the Crystal Springs Shirt Corp. had ended. Larkins made a motion that the Shaw Industries, Inc., employees call off their strike and return to work. It is undisputed that the Union notified Respondent, and that the notification was received by Respondent on October 25, 1978, that the strike had ended at Shaw Industries, Inc.

In the notification, which was made both by mailgram and letter, the Union stated to Respondent, "Please be advised that the strike at Shaw Industries is officially over effective October 19, 1978, and the employees listed below have asked us to request for them an unconditional return to work." Both the mailgram and letter were addressed to Plant Manager Donald Doss and both were dated October 24, 1978. The letter from the Union to Respondent made the request on behalf of each individual named in paragraph 9 of the amended complaint of the General Counsel (G.C. Exh. 1(o)).

Upon receipt by Respondent of the notification of the end of the strike, it sent the following letter to all the employees named in paragraph 9 of General Counsel's Exhibit 1(o) with the exception of employees Louella Baymon, Donna Brent, Lillie Mae Bland, Delores Griffin, Shirley Minley, and Shirley A. Williams:

> Shaw Industries
>
> Dear:
>
> The Company has been informed that you have ended your strike against it and that you have offered to come back to work without any conditions.
>
> If you want to return to work, you should report to the Company's personnel office by no later than 3:30 p.m. on Friday, November 3, 1978.
>
> If you do not report to the Company's office prior to this date and time, the Company will assume that you do not want to return to work.

Various employees of Shaw Industries, Inc., responded to the letter of Respondent and were placed on a preferential rehiring list by Respondent. Strikers who have been engaged in an unfair labor practice strike, as in the case at bar, are entitled to reinstatement to their former jobs even if permanent replacements have been hired to replace the returning unfair labor practice strikers. *Mastro Plastics Corp.* v. *N.L.R.B.*, 350 U.S. 270 (1956). As Respondent in its brief acknowledges the Board has held that where a sympathy striker supports an unfair labor practice strike against a common employer, the sympathy striker enjoys the same reinstatement rights as the primary striker. *C. K. Smith & Co., Inc.*, 227 NLRB 1061 (1977). I therefore conclude and find that the striking employees of Shaw Industries, Inc., were entitled to immediate reinstatement upon their unconditional offer to return to work, which offer was made for them by the Union.

Respondent did not meet its obligation of immediately reinstating its employees. Respondent contends, notwithstanding these facts, it owed no consideration to those employees who did not respond to its letter set forth above. I conclude it would have been futile for them to have responded because Respondent did not reinstate those who did respond, but instead placed them on a preferential rehiring list. Additionally, the letter sent to employees by Respondent afforded no assurance that the employees would be reinstated immediately or at all to their former positions. Respondent's obligation to its employees was not met by the letter that it sent to the employees as soon as it learned the strike was completed. The obligation Respondent had was to immediately reinstate the unfair labor practice strikers who had made the unconditional offer to return to work even if it necessitated dismissing those hired as striker replacements on and after April 6, 1978.[2] I find Respondent's failure to reinstate its employees who had engaged in the unfair labor practice strike upon their unconditional offer to return to work violated Section 8(a)(3) and (1) of the Act.

The parties stipulated that certain employees had been returned to work at least by the date specified for that particular employee in the stipulation or that certain employees did not or were not returned to work at all prior to the closing of the plant on March 31, 1979. The parties stipulated that Essie Thomas, Patricia Sands, Martha Smith, Mary Lewis, Geneva Love, Shirley James, Dorothy Johnson, Inette Jackson, Vender Fair, Geneva Davis, Carrie Davis, Bobby Bryson, Luela Bayman, Bobby Battle, Susie Barns, and Lois Allen did not return to work at all prior to the plant closing on March 31, 1979. The parties further stipulated that: Louie Bland returned to work in the payroll period ending November

[2] Respondent hired at least 57 striker replacements after April 6, 1978.

4, 1978; Ella Mae Davis and Irene Thomas returned to work in the payroll period ending November 18, 1978; Margaret Davis returned to work in the payroll period ending December 16, 1978; Ruth Johnson, Patricia Lewis, Mary Phillips, Earlene Tillman, Catherine Thompson, Alma Washington, Gloria Westmoreland, and Bobby West returned to work in the payroll period ending December 30, 1978; Delores Griffin, Willie Hickman, Bobby Jean Jones, Rose Marie Turner and Marguerite Young returned to work in the payroll period ending January 13, 1979; Carrie Coleman returned to work in the payroll period ending January 27, 1979; and Jeanette Freeman returned to work in the payroll period ending February 10, 1979.

The parties stipulated that employee Shirley Minley had returned to work prior to the unit employees ending their strike on October 19, 1979. The parties further stipulated that employee Shirley Williams did not participate in the strike, but was employed continuously until May 18, 1978, at which time she was terminated from Shaw Industries, Inc. There is no contention that her termination was unlawful.

Respondent contested the status of three employees with respect to their relationship to the strike and their reinstatement rights, if any. The contested employees were Donna Winston, Clara Larkins, and Lillie Mae Bland.

Donna (nee Brent) Winston testified she commenced work for Respondent when the weather was cold, approximately 2 years prior to the hearing, but could not be more specific as to a date or time when she commenced work for Respondent. Winston testified she worked until the strike started at Respondent. Winston further testified she worked a normal work schedule on April 5, 1978, and that nothing out of the ordinary happened at work on that date. Winston denied being fired on April 5, 1978, and further denied having any problem meeting work production at the time.

Former Plant Manager Donald Doss testified that on April 5, 1978, he reviewed the employment record of Winston and spoke with the individual assigned to train her, with respect to Winston's production potential. Doss stated he followed normal procedure in reviewing Winston's production potential. Doss testified it was deemed Winston would not be able to reach production. Doss then spoke with Winston and informed her she was being terminated as of that day. Winston was paid for the remainder of the afternoon of April 5, 1978.

I credit Doss' version of the events of April 5, 1978, as they relate to employee Winston. Winston's memory was very vague as to the events of her employment with Respondent. She could not recall who worked on either side of her on the day of April 5, 1978, nor could she recall how long she had worked for Respondent. Winston's one and only affidavit given to the Board in this case was given on July 8, 1980, the day before the hearing, and the affidavit was unsigned. Winston did not advance any valid reason for not signing the affidavit. Winston did not impress me as a credible witness and, as such, I discredit her denial that she was discharged on April 5, 1978. I conclude and find that Winston was discharged prior to the strike at Respondent's plant.

Clara Larkins testified she started work for Respondent in October 1974 and worked until the strike commenced at Respondent. Larkins testified she obtained full-time employment at a garment factory, Fine Vines, after the strike had commenced at Respondent. However, Larkins testified she did not intend for her employment at Fine Vines to be permanent, but only wished to work there until the employees of Respondent could return to work. Larkins was among those named employees for whom the Union made an unconditional offer to return to work at the conclusion of the strike. Larkins testified she did not walk the picket line, but kept in contact with those that did as she passed the picket line along the route she followed to her job at Fine Vines. Larkins further testified she was terminated from her job at Fine Vines and afterward spoke to Doss in August or September 1978 about employment at Respondent. Larkins stated she spoke with Doss about employment because she needed to do so in connection with an unemployment claim she had filed as a result of her termination at Fine Vines. According to Larkins, Doss asked her to come in and fill out an employment application. Larkins filled out an employment application at Respondent as requested. Larkins testified she filled out the application even though she considered herself to still be an employee of Respondent. Approximately 3 weeks after filling out the application, Larkins proceeded to Respondent's plant and spoke with Doss. According to Larkins, Doss told her that he did not have any work for which she was qualified. Larkins did not receive any communication from Respondent at the end of the strike regarding her returning to work.

Doss testified he had heard a rumor late in the strike that Larkins had accepted employment at Fine Vines and as a result of that rumor he called Fine Vines and confirmed with a Mr. Monquer that Larkins had in fact accepted employment with Fine Vines. Doss testified he had Larkins fill out an employment application when she came by to see him during the strike because of his having learned she had accepted full-time employment elsewhere. Doss further testified he did not cause a letter to be sent to Larkins about her employment intentions at the conclusion of the strike because he no longer considered her to be an employee.

I conclude and find that Larkins did not abandon her job with Respondent. I do not view Larkins' obtaining interim employment as in any way constituting an abandonment of her employment with Respondent. Larkins testified she always intended to return to work at Respondent and made attempts to return even before the strike ended. As such, Larkins was entitled to immediate reinstatement following the unconditional offer to return to work made on her behalf by the Union.

Lillie Mae Bland testified that she worked for Respondent from June 1977 until the strike. Bland testified that the day the strike ended she contacted Respondent about returning to work. Bland was not definite as to when she returned to work. Respondent's Exhibit 4, the authenticity of which was agreed to by counsel for the General Counsel, indicates that Bland worked 63.7 hours for the 2-week pay period ending November 4, 1978. I

therefore conclude that Bland was returned to work at or about the conclusion of the strike and, as such, is not entitled to any backpay.

Respondent, at the hearing and in brief, makes the contention that it has been prejudiced by the delay of the General Counsel in litigating this case. The original complaint issued on December 21, 1978, and, as set forth elsewhere in this Decision, the matter was not heard until July 9, 1980. Respondent contended at the time of the hearing that it was difficult to locate witnesses and/or obtain records of the now defunct Shaw Industries, Inc. Respondent contends the case before me should have been heard at the time of the hearing of *Crystal Springs, supra*, or delayed until all appeals have been exhausted with respect to that case. I reject Respondent's contentions of prejudice. Respondent had an obligation to preserve records and documents from the time it had notice, which was within approximately a month of the original charge in the case, that the matter would be brought to hearing. Further, there is no showing of any prejudice to Respondent which can be attributed to the General Counsel in this case. Accordingly, I find no merit to Respondent's defense of prejudice by delay in this case.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; Crystal Springs Shirt Corp.; Bernstein and Sons Shirt Corp., Inc., constitute a single, integrated business enterprise and a single employer and, as such, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. Commencing on or about April 6, 1978, the employees of Respondent named in paragraph 9 of the amended complaint, dated July 3, 1980, engaged in an unfair labor practice strike in protest of Respondent's unfair labor practices, said strike being an unfair labor practice strike from its inception.

4. By refusing and failing after October 25, 1978, to reinstate its employees, referred to above in Conclusions of Law 3, upon their unconditional offer to return to work, Respondent discriminated against them in violation of Section 8(a)(3) and (1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

I shall recommend that Respondent cease and desist from the unfair labor practices found and take certain affirmative action which I deem necessary to effectuate the purposes of the Act.

Having found that the unit employees who engaged in a strike commencing April 6, 1978, are unfair labor practice strikers, I would normally recommend their reinstatement upon their unconditional offer to return to work and the dismissal of persons hired on and after April 6, 1978, if that becomes necessary. However, inasmuch as the Shaw Industries, Inc., division of Respondent involved in this proceeding has ceased operation as of March 31, 1979, I shall recommend that the unfair labor practice strikers be made whole for loss of earnings, if any, they may have suffered as a result of Respondent's refusal to reinstate them in a timely fashion by paying to each of them a sum of money equal to that which they would have earned as wages during the period commencing 5 days after October 25, 1978, until such time as they were offered reinstatement or until such time as the plant ceased operation, whichever comes sooner, with interest thereon. All losses to be reimbursed shall be computed in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), to which shall be added interest to be computed as proscribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

As Respondent's Shaw Industries, Inc., division is no longer in operation, I shall recommend that the appropriate notice in this case be posted at Respondent's Crystal Springs Shirt Corp. location and the Bernstein and Sons Shirt Corp. location. I recommend such postings because Respondent's operations constitute a single integrated business and a single employer within the meaning of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record of this case, I hereby issue the following recommended:

ORDER[3]

The Respondent, Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; Crystal Springs Shirt Corp.; Bernstein and Sons Shirt Corp., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing and failing to reinstate employees who engaged in a strike to protest unfair labor practices of Respondent upon their unconditional offer to return to work.[4]

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[3] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[4] This cease-and-desist directive should not be confused with an affirmative order requiring reinstatement. In that regard, see my comments in the section of this Decision entitled "The Remedy."

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Reimburse and make whole the unfair labor practice strikers for any loss of pay they may have suffered by reason of Respondent's discrimination against them during the period commencing 5 days after October 25, 1978, until the date of Respondent's unconditional offer of reinstatement to them or until Respondent ceased operation at its Shaw Industries, Inc. location on March 31, 1979, together with interest at the rate and in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its plants in Crystal Springs, Mississippi, and New York City, New York, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."